

# Tenancy Reforms

## A Critique of NITI Aayog's Model Law

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There is no doubt that the agricultural land leasing laws in India need to be amended to make land leasing legal and easier. The NITI Aayog report (2016) proposes a formal model law on land leasing. Critically examining the logic for liberalisation of land leasing laws, the limitations of the model lease agreement are brought out. It is argued that the model law ignores the diversity and dynamics of leasing arrangements in India and the socio-economic implications of the realities of tenancy practices.

Tenancy is seen as one way of correcting the mismatch between the distribution of land and that of labour in the agricultural sector. In India, it has not delivered goods, rather it has led to concealed tenancy and lack of access to assured land lease for tenants in which they could invest for bettering productivity and returns, largely due to its regulation at the state level. Therefore, the issue of tenancy reforms remains a crucial question of policy reform for efficient, equitable and inclusive agricultural growth and development.

The issue of land leasing and tenancy has acquired renewed policy focus with the NITI Aayog bringing out two reports on the farm sector recently (NITI Aayog 2015, 2016). One of these focus specifically on the issue of land leasing and draft a model land leasing act with a draft lease agreement (NITI Aayog 2016).

The report argues for and recommends liberalisation of land leasing. It recommends a formal law on grounds of efficiency and equity in terms of protecting the owner's rights on land, providing access to institutional credit and other supporting services to the tenants, providing occupational mobility to landowners as farmers, and making tenants incentivised to invest in the leased lands. It argues that keeping productivity in mind, this would put farmlands in the most desirable hands, be it landless, marginal or small farmers who use family labour or medium/large farmers who have resources for farming and can take risk (NITI Aayog 2016). The report also argues that with the political power available to rural poor through panchayati raj institutions (PRIs), and other democratic processes, the tenancy relationship need not be exploitative anymore.

This article critically examines the NITI Aayog report (2016) on land leasing reforms, the issue of tenancy, and the policy implications of ignoring certain tenancy practices in specific regions.

Microstudies from different states show that the proportion of leased-in land is significantly higher than reported by both the National Sample Survey (NSS) and the Agricultural Census. The actual leased-in holdings are reported to be as high as 10%–50% of the operated holdings across states (Gupta and Giri 2016). Despite the practice of reverse tenancy in many states, especially in those impacted by green revolution, it is the marginal, small and landless farmers who lease-in land. At the all-India level, 36% of the tenants are landless and another 56% marginal landowners who are net leasers than being net lessors, thus, 92% leasers being from marginalised categories (NITI Aayog 2016).

Further, dominant tenancy contracts in an area differ depending on the crop and technology and the extent of market development besides social and economic environment (Eswaran and Kotwal 1985). Each crop has its own logic for tenancy and has implications for labour opportunity and nature of labour contracts (Gidwani 2001). Also, more than one contract types can coexist in a given area due to the factors, besides risk sharing and transactions costs, like worker or tenant qualities, and imperfections in both land and other input markets. In tenancy contracts where produce as well as input sharing is involved, labour availability with the tenant, especially family labour, supervision of labour, and the quality of decision-making about farming issues like crop choice, input choice and management also matter (Eswaran and Kotwal 1985). Also, tenancy is a product of many historical, cultural, sociological and legal processes besides the nature of markets in different regions (Vijay and Srinivasulu 2013).

### Proposed Land Leasing Act

The draft Agricultural Land Leasing Act 2016 proposed in the report includes various types of farmer groups like self-help groups, joint liability groups and farmer producer organisations as those who can lease-in land. It specifies that the lessor and the lessee shall enter into a written lease agreement for which it even provides a model agreement. But, at the same time, it also provides for an oral lease to be legal to protect the landowner.

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This is contradictory, as if an oral lease can be legal, then why should a written lease agreement be prescribed?

It recommends the government not to fix a minimum or maximum lease amount in fixed cash or kind or share of produce to be given to the landowner as this is to be mutually agreed upon by the two parties. This again is not well founded as there have been cases of excessive lease rates being charged in many parts of India in the recent years which are not justified by the crops grown and incomes expected. Therefore, there is a need to cap the lease rates depending on the cropping pattern so that the livelihoods of tenants who are landless or marginal and small farmers are not jeopardised by excessive lease rates or other tenancy terms. As there are crop specific *bhagidar* shares in output in the case of *bhagidari* (labour tenancy) in Gujarat, there is logic in capping lease rates or lessor crop shares for different crops.

The NITI Aayog report claims that with the spread of PRIs and other democratic institutions, the tenancy cannot be exploitative anymore. But, if the lease rates in Punjab or the *bhagidari* system in Gujarat are any indication, the exploitation of the tenant/lessee still exists in the form of excessive lease rates or low output share of the *bhagidar* for his labour though he does take much less production risk as he does not share input costs. There is also the exploitation of hired farm labour through the *bhagidar* as he hires them directly under more stressed economic conditions as a household and tries to cut down his labour costs by paying lower or extracting higher work. This is also underscored by Rutten (1986) writing about the *bhagidari* system in Gujarat:

by way of organizing the agricultural work on the field and the recruitment of labour in an entrepreneurial manner, these middle-large farmers have solved the problem of fluctuations in supply and demand of labour while still exercising control over the process of agricultural production. This, however, is entirely at the expense of the casual labourers working in their fields who most of the year do not earn more than ₹6 to ₹8 per day and that only on days they are able to find work... Thus, creation of an intermediate stratum has become an important aspect of the entrepreneurial way of farm management in which responsibility for the welfare of labourers working in the fields is abdicated to an increasing extent to a lower layer in rural society. (pp A-19)

The model act goes on to say that the lease agreement may or may not be registered depending on the mutual agreement of the two parties, but if it is a written lease agreement, it may be attested by the village revenue officer or the sarpanch or the local bank officer or a notary with two witnesses. While specifying the rights and responsibilities of the landowner, it states that the owner will not interfere as long as the tenant does not default in the payment of lease amount, does not cause damage to soil health, does not use the land for purposes other than what has been agreed upon, and does not sublease land to any other person. On the rights of the tenant, it provides for the expected value of output from leased-in land during the lease period to be used as collateral by credit institutions for advancing loan to the tenant if this is mutually agreed between the financial institution and the tenant.

This recommendation is half-hearted as it does not make it mandatory for the institution to accept a written lease agreement. The pledging of tenant's share of produce for availing farm credit is unlikely to happen as the landowner exercises control over the produce in practice, especially under input and output sharing tenancy and *bhagidari* arrangement. He may not cooperate with the tenant, as seen in the experience of the Andhra Pradesh Licenced Cultivators Act 2011, which the NITI Aayog report recognises, and is well documented elsewhere (Vakulabharnam et al 2011).

The tenant will also not have any right to build any structures or fixtures without the express permission of landowner. The model act specifies that the tenant will pay the lease consideration in time as specified in the agreement, and any delay in payment beyond three months from the due date shall constitute major default and will entitle the landowner to issue a notice of termination of the lease. The dispute resolution is generally left to third party mediation or the village panchayat, failing which, a *tehsildar* or an equivalent rank officer will adjudicate the dispute within a period of four weeks. Further, it recommends a special land tribunal headed by a retired high court or a district court judge at the state level to resolve disputes as a final authority.

The standard lease agreement provided by the committee provides for—besides farm input obligations of lease and lessor—only fixed quantity or share of harvested crop as the two types of tenancy. It ignores many other forms and systems of payment such as labour tenancy in many parts of India. In Gujarat, there is labour tenancy (the *bhagidar* system as discussed above), wherein the tenant provides only labour, and in turn, gets a share of crop/produce which varies from 33% in food crops to 25% in cash crops. The landowner meets all input expenses other than labour and takes all management decisions about the farm. There is also the supervision or management tenancy in Gujarat, where a tenant does not contribute the labour component, but only organises labour (paid by the farm owner), and supervises farm operations. He gets one-tenth of the produce called *pavda bhaag* for this role (Bhatt 2008).

In parts of North India, there is the (declining) practice of another form of labour tenancy where the permanent worker (known as *siri/sanjhi* [partner] in Punjab) provides only labour and gets a certain percentage of produce, and shares input costs in that proportion after accounting for the contributions of the landowner's own adult male workers and bullocks/tractors.

Further, since irrigation is becoming increasingly crucial for farming, there is even water tenancy emerging in some parts of India like Gujarat, where water provision to a farmer gets a share in produce from the farm. These contracts are of two types: bipartite contracts where water sellers provide irrigation and share 50% of the cash expenses (except labour), and claim 50% of the output, and tripartite contracts under which water seller, owner and tenant labour share equally the cash expenses as well as crop output (Saleth 2004).

The NITI Aayog report does not show any awareness of these types of tenancy. It separates the provision of input sharing from the payment of lease amount and specifies major inputs like seeds, fertilisers, pesticides and labour, missing out on important ones such as farm machinery and irrigation.

## Concluding Remarks

There is no doubt that there is a need to amend leasing laws to make them allow

legal leasing and permit more efficient use of such land but there should be ceiling on the amount of land leased by a person/entity so that concentration of leased land does not take place beyond a point. The land ceiling limits for ownership in each state can be considered as ceilings for leasing-in of land to prevent excessive concentration of operated land in a few hands.

Though NITI Aayog (2015) also suggests this, it only refers to private investors in this context, and not local large and medium farmers. While the ban on tenancy by corporate agencies must continue, leasing-in by individuals, farming groups and farm cooperatives suitably defined to prevent bogus entities acting as fronts for corporate agents, should be encouraged. This will also put to rest the case for removal of ceilings on landholdings for

large landowners or corporate business to reap economies of scale, on grounds of size limitation (Vyas 2001; Dogra 2002).

The leasing policy also needs to take into account the regional specificities of leasing practices like the bhagidari system in Gujarat, which is a form of labour tenancy which is not even mentioned in the NITI Aayog report.

#### REFERENCES

- Bhatt, S (2008): "Nature of Agricultural Land Lease Contracts: A Study of Three Villages in Anand District," *Agricultural Situation in India*, May, pp 63–69.
- Dogra, B (2002): "Land Reforms, Productivity and Farm Size," *Economic & Political Weekly*, Vol 37, No 6, pp 532–33.
- Eswaran, M and A Kotwal (1985): "A Theory of Contractual Choice in Agriculture," *American Economic Review*, Vol 75, No 3, pp 352–67.
- Gidwani, V (2001): "The Cultural Logic of Work: Explaining Labour Deployment and Piece Rate Contracts in Matar Taluka, Gujarat, Parts 1 and 2," *Journal of Development Studies*, Vol 38, No 2, pp 57–108.
- Gupta, A and A Giri (2016): "Suicide Despite Compensation," *Economic & Political Weekly*, Vol 51, No 18, p 4.
- NITI Aayog (2015): "Raising Agricultural Productivity and Making Farming Remunerative for Farmers," Occasional Paper, December, NITI Aayog, Government of India.
- (2016): "Report of the Expert Committee on Land Leasing," 31 March, NITI Aayog, Government of India.
- Rutten, M (1986): "Social Life of Agricultural Entrepreneurs: Economic Behavior of Life Style of Middle-large Farmers in Central Gujarat," *Economic & Political Weekly*, Vol 30, No 13, pp A15–A22.
- Saleth, M (2004): "Strategic Analysis of Water Institutions in India: Application of A New Research Paradigm," IWMI Research Report 79, International Water Management Institute, Colombo.
- Vakulabharnam, V, N P Prasad, K Laxminarayana and S Kilaru (2011): "Understanding the Andhra Crop Holiday Movement," *Economic & Political Weekly*, Vol 46, No 50, pp 13–16.
- Vijay, R and Y Srinivasulu (2013): "Agrarian Structure and Land Lease Arrangements: An Investigation in Nine Villages in Andhra Pradesh," *Economic & Political Weekly*, Vol 48, Nos 26 & 27, pp 42–49.
- Vyas, V S (2001): "Agriculture: Second Round of Economic Reforms," *Economic & Political Weekly*, Vol 36, No 10, pp 829–36.